



OLR RESEARCH REPORT

September 13, 2012

2012-R-0399

PERSONAL SERVICE AGREEMENT REQUIREMENTS

By: Terrance Adams, Legislative Analyst II

This report describes requirements that executive branch state agencies must follow when entering into personal service agreements (PSA).

SUMMARY

A PSA is a written agreement with a personal service contractor, which is a person, firm, or corporation hired by an agency for a fee to provide services to the agency. The PSA defines the services or end product that the contractor will deliver to the agency. The law prohibits agencies from hiring a personal service contractor without executing a PSA.

Most PSAs have competitive selection requirements; the law requires PSAs costing more than \$20,000 or lasting for more than one year to be based on competitive negotiation or competitive quotations unless the purchasing agency applies to the Office of Policy and Management (OPM) secretary for a waiver and the secretary grants the waiver. Additionally, PSAs that are expected to (1) last for more than one year or (2) cost more than \$50,000 must be approved by the OPM secretary before the agency begins the solicitation process. Agencies must also (1) follow OPM standards when entering into a PSA and (2) receive the secretary's approval for certain amendments to PSAs.

The above requirements apply to departments, boards, councils, commissions, institutions, or other executive branch agencies, except for public higher education institutions. Additionally, certain types of consultant or contractual services agreements are excluded from the requirements.

BIDDING REQUIREMENTS

Competitive Solicitation Requirements

The law requires PSAs costing more than \$20,000 or lasting for more than one year to be based on competitive negotiation or competitive quotations unless the purchasing agency applies to the OPM secretary for a waiver and the secretary grants the waiver (see *Waivers* below). PSAs costing \$20,000 or less and lasting for one year or less must be based, when possible, on competitive negotiation or competitive quotations ([CGS §§ 4-214 & 215](#)). (Competitive negotiation allows changes to be negotiated after bidders submit their prices and proposals.)

When agencies want to make a sole source selection for a PSA that costs more than \$20,000 or lasts for more than one year, they must receive OPM's approval before beginning discussions with a potential contractor. They must also receive OPM's permission to proceed with a selection for such a PSA if a solicitation produces fewer than three acceptable proposals.

OPM Approval Process

PSAs that are expected to (1) last for more than one year or (2) cost more than \$50,000 must be approved by the OPM secretary before the agency begins the solicitation process. An agency seeking OPM's approval must submit:

1. a description of the services and the need for them;
2. an estimate of the cost and the term;
3. whether they will be ongoing;
4. whether the agency has contracted out for the services during the preceding two years and, if so, the term of the agreement, amount paid, and name of the contractor;

5. whether another state agency has the resources to provide the services;
6. whether the agency intends to use competitive negotiation and, if not, why not; and
7. whether the services can be purchased on a cooperative basis with other state agencies.

The OPM secretary has 15 business days to approve or disapprove an application; the application is deemed approved if he doesn't act within that timeframe. Additionally, the secretary must notify the Auditors of Public Accounts of any applications that seek audit services. The auditors must have an opportunity during the 15-day period to review the application and advise the secretary as to whether the services are necessary and, if so, whether the auditors could provide them ([CGS § 4-216](#)).

OPM Standards

Agencies must follow OPM standards when entering into PSAs. The standards include provisions for:

1. evaluating the need for a PSA;
2. developing a request for proposals (RFP);
3. advertising for contractors;
4. evaluating and selecting a contractor, including compliance with the state's supplier diversity program;
5. monitoring and evaluating contractor performance;
6. documenting the process for selecting and managing contractors; and
7. carrying out any other aspect of the process.

Agencies must also establish written procedures for implementing OPM's procurement standards. The law prohibits an agency from executing PSAs unless the OPM secretary has approved these written procedures ([CGS § 4-217](#)).

Agency Solicitation Process

Under a competitive solicitation process, agencies advertise for personal service contractors through an RFP. The RFP must include (1) an outline of the work to be performed, (2) required minimum qualifications for the contractor, (3) criteria for reviewing proposals, and (4) the format for the proposals and deadline for submitting them.

For each RFP, the law requires agencies to establish a screening committee to evaluate the responses. The committee must rank the proposals according to criteria established by the RFP and submit the names of the top three proposers to the agency head, who makes a selection and negotiates a contract ([CGS § 4-217](#)). He or she can reject all three top-ranked proposals, but in this case no award is made and the RFP process is voided.

PSA Amendments

The law requires agencies to obtain the OPM secretary's approval for an amendment to a PSA if the amendment (1) is to an agreement whose original cost was more than \$50,000, (2) costs 100% or more of the original agreement, (3) increases the agreement's cost to more than \$50,000, (4) extends the terms of the agreement beyond a one-year period, or (5) is the second or subsequent amendment to the agreement ([CGS § 4-219](#)). The secretary has 15 business days to approve or disapprove a proposed amendment; the amendment is deemed approved if he doesn't act within that timeframe.

Additionally, the law prohibits PSAs with an individual from having a term of more than one year. Such agreements can be extended or renewed for an unlimited term, but the agency must notify the Department of Administrative Services (DAS) commissioner, Labor and Public Employees Committee, and appropriate collective bargaining representative of the extension or renewal ([CGS § 4a-7a](#)).

EXEMPTIONS

The above solicitation requirements apply to departments, boards, councils, commissions, institutions, or other executive branch agencies, except for public higher education institutions. They also do not apply to:

1. certain contractual services purchased by or under authority granted by DAS (e.g., maintenance and janitorial services),

2. consultants for certain (a) Department of Construction Services (DCS) or Department of Transportation (DOT)-administered construction projects or (b) information and telecommunications systems, or
3. services provided by an agency of the federal government or the state or of a political subdivision of the state ([CGS §§ 4-212 & 10a-151b](#)).

The DAS, DCS, and DOT contracts described above are subject to competitive bidding requirements separate from those described in this report. The same is true for service agreements entered into by public higher education institutions.

Waivers

The law requires the OPM secretary to adopt guidelines for determining services that qualify for a waiver from the competitive solicitation requirements. Qualifying services must include (1) those for which the cost of a competitive selection outweighs the benefits, as documented by the agency; (2) those provided by a contractor having proprietary services, or patent rights; (3) services to be provided by a contractor mandated by the general statutes or a public or special act; and (4) emergency services ([CGS § 4-215](#)). Additionally, the secretary has extended waiver eligibility to services requiring a contractor with a unique skill set.

ADDITIONAL RESOURCES

Office of Policy and Management: *Procurement Standards for Personal Service Agreements and Purchase of Service Contracts*
http://www.ct.gov/opm/lib/opm/finance/psa/psa_pos_procurementstandards_final_5-14-12.pdf

Office of Policy and Management: *Personal Service Agreements 2011 Annual Report*
http://www.ct.gov/opm/lib/opm/finance/psa/psa_annual_report_2011.pdf

TA:tjo